

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

TERESA TITUS, as an individual and as a  
representative of the class,

Plaintiff,

v.

ZESTFINANCE, INC., BLUECHIP  
FINANCIAL, and DOUGLAS MERRILL,

Defendants.

No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMAND**

Plaintiff Teresa Titus (“Plaintiff”), by and through her undersigned counsel, respectfully files this Class Action Complaint on behalf of herself and class of similarly situated individuals against Defendants ZestFinance, Inc., BlueChip Financial, and Douglas Merrill for engaging in a scheme to make usurious loans in violation of Washington law and the laws of many other states.

**I. GENERAL ALLEGATIONS**

1. This is a case about a scheme to make online short terms loans (commonly called “payday loans”) that carry triple-digit interest rates, often exceeding 400%, and are illegal in many states, including Washington.

2. Payday loans often target vulnerable borrowers and, left unregulated, can economically devastate borrowers and their communities. *See Johnson v. Cash Store*, 68 P.3d 1099, 1105-06 (Wash. Ct. App. 2003) (describing the “debt treadmill” that traps consumers in a

1 “vicious cycle of indebtedness” and noting that a payday lender “has no regard for the  
2 disastrous economic effect of his illegally high rates”).

3 3. In recent years, payday lenders have concocted various schemes to make high-  
4 interest loans over the internet while avoiding state usury laws.

5 4. In one scheme—the so-called “rent-a-bank” strategy—payday lenders convinced  
6 banks headquartered in states with high (or nonexistent) usury limits to form a lending venture  
7 in order to capitalize on the fact that the bank was obligated to comply only with the usury law  
8 of its home state, even for loans made elsewhere.

9 5. Federal banking regulators shut down these “rent-a-bank” schemes. Michael A.  
10 Stegman, *Payday Lending*, 21 JOURNAL OF ECONOMIC PERSPECTIVES 169, 178-79 (2007)  
11 (describing rent-a-bank scheme and regulatory reaction).

12 6. Some payday lenders have since developed a new method to attempt to avoid  
13 state usury laws—the “rent-a-tribe” scheme.

14 7. In a rent-a-tribe scheme, the payday lender—which does most of its lending over  
15 the internet—affiliates with a Native American tribe to attempt to insulate itself from federal  
16 and state law by piggy-backing on the tribe’s sovereign legal status and its general immunity  
17 from suit under federal and state laws.

18 8. Like its predecessors, this scheme is doomed to fail, because even a cursory  
19 examination of the underlying relationship between the payday lender and the tribe  
20 demonstrates that the relationship is insufficient to permit the lender to avail itself of the tribe’s  
21 immunity.

22 9. Rent-a-tribe schemes are not designed to promote tribal business but instead are  
23 contrivances aimed at avoiding state usury law, with the vast majority of the revenues going to  
24

1 non-tribal entities.

2 10. In recent years, these rent-a-tribe schemes have come under increasing scrutiny  
3 from regulators, with one prominent perpetrator convicted and sentenced to 16 years in prison  
4 related to federal racketeering and truth-in-lending laws.<sup>1</sup>

5 11. This case is about such a rent-a-tribe scheme. In this case, non-tribal entities  
6 ZestFinance and Douglas Merrill provided the capital, marketing, underwriting, and other  
7 resources for BlueChip Financial dba Spotloan (“BlueChip”), a purported tribal entity in North  
8 Dakota that makes usurious loans to Washington residents and to persons located throughout  
9 the United States.

10 12. The Washington Department of Financial Institutions has found that BlueChip  
11 was not licensed in the state of Washington to make loans or registered to conduct business in  
12 Washington.<sup>2</sup>

13 13. Nevertheless, Defendants have and continue to make and collect usurious loans  
14 to Washington residents.

15 14. Plaintiff, on behalf of herself and the Washington Class set forth below, seeks to  
16 recover damages and penalties for the usurious interest and fees charged by Defendants to  
17 Washington residents.

18 15. Plaintiff also seeks to recover damages on behalf of herself and the RICO Class  
19 set forth below.

## 20 II. JURISDICTION AND VENUE

21 16. The Court has jurisdiction over Plaintiff’s Racketeer Influenced and Corrupt  
22 Organizations (“RICO”) claims under 18 U.S.C. § 1965 and 28 U.S.C. § 1331 and supplemental

23 <sup>1</sup> See [www.justice.gov/usao-sdny/pr/scott-tucker-sentenced-more-16-years-prison-running-35-billion-unlawful-internet-payday](http://www.justice.gov/usao-sdny/pr/scott-tucker-sentenced-more-16-years-prison-running-35-billion-unlawful-internet-payday).

24 <sup>2</sup> See [dfi.wa.gov/consumer/alerts/bluechip-financial-not-licensed-washington](http://dfi.wa.gov/consumer/alerts/bluechip-financial-not-licensed-washington).

jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367. The court also has jurisdiction under the Class Action Fairness Act because Plaintiff is a Washington citizen, at least one defendant is not a Washington citizen, the matter in controversy exceeds \$5,000,000, and there are at least 100 class members.

17. Venue is proper in this Court under 28 U.S.C. §§ 1391 because a substantial part of the events giving rise to the claim occurred in this District.

### III. PARTIES

18. Plaintiff Teresa Titus is a natural person who resides in Ridgefield, Washington.

19. Defendant Douglas Merrill is a natural person residing in California.

20. Defendant ZestFinance, Inc. is Delaware corporation headquartered in Los Angeles, California.

21. Defendant BlueChip Financial dba Spotloan is purportedly a tribal corporation located in Belcourt, North Dakota, and incorporated under the laws of the Turtle Mountain Band of Chippewa Indians.

### IV. SERVICE ON THE ATTORNEY GENERAL

Counsel for Plaintiff are causing a copy of this pleading to be served contemporaneously with this filing on the Attorney General of Washington in accordance with RCW 19.86.095.

### V. WASHINGTON USURY LAWS

22. Washington's usury laws were "enacted in order to protect the residents of this state from debts bearing burdensome interest rates" and "in recognition of the duty to protect our citizens from oppression." RCW 19.52.005.

23. In Washington, the maximum allowable interest rate is twelve percent per annum. RCW 19.52.020(1); *see also* RCW 19.52.025; State Maximum Interest Rate, *available*

1 at <http://leg.wa.gov/CodeReviser/Documents/rates.htm>. “No person shall directly or indirectly  
2 take or receive in money, goods, or things in action, or in any other way, any greater interest for  
3 the loan or forbearance of any money, goods, or things in action.” RCW 19.52.020(1).

4 24. If interest greater than the statutory maximum of twelve percent is directly or  
5 indirectly contracted for, received, or reserved, the contract is usurious. RCW 19.52.030.

6 25. If a usurious interest rate is charged, the creditor shall be entitled to collect only  
7 the principal amount of the loan, less the amount of interest accruing thereon, and if any interest  
8 was actually paid, the creditor shall be entitled to collect only the principal amount less twice  
9 the amount of the interest paid and less the amount of all accrued but unpaid interest. RCW  
10 19.52.030. A plaintiff may seek application of these statutory penalties by bringing an action  
11 under RCW 19.52.032.

12 26. RCW Chapter 19.52 applies to loans made to any person residing in Washington  
13 at the time the loan was made, regardless of the location where the loan was made. RCW  
14 19.52.034.

15 27. In addition to a statutory usury claim entitling a plaintiff to recover the penalties  
16 provided in RCW 19.52.030, entering into or transacting a usurious contract constitutes a per se  
17 unfair act or practice in the conduct of commerce for purposes of establishing a claim under the  
18 Washington Consumer Protection Act. RCW 19.52.036.

## 19 VI. DEFENDANTS’ SCHEME TO AVOID USURY LAWS

20 28. Defendants operate a rent-a-tribe scheme that charges up to 490% annual interest  
21 on short term loans.<sup>3</sup>

22 29. In 2009, former Google Chief Information Officer Douglas Merrill founded  
23 ZestFinance, which was then known as ZestCash, and which is now known as Spotloan.

24 <sup>3</sup> See [www.spotloan.com/how-spot-loans-work](http://www.spotloan.com/how-spot-loans-work).

30. ZestFinance wants to “reinvent[] the process of giving loans” and “to apply Google-like math to reinvent how credit decisions are made.”<sup>4</sup>

31. ZestCash, using its proprietary underwriting software, began making high-interest loans over the internet.

32. By mid-2012, ZestCash was rebranded as “Spotloan.”

33. In an effort to avoid state usury laws, in 2012, Merrill and ZestFinance affiliated with the Turtle Mountain Band of Chippewa Indians (the “Tribe”) located in Belcourt, North Dakota.

34. At the direction of Merrill and ZestFinance, a tribal entity, BlueChip Financial, was created to serve as a front to disguise ZestFinance and Merrill’s role in making usurious loans.

35. BlueChip immediately began making loans using the “Spotloan” tradename.

36. Under the scheme, loans are made in the name of “Spotloan c/o BlueChip Financial,” but ZestFinance and Merrill provide the infrastructure to market, fund, underwrite, and collect on the loans, including the underwriting software.

37. ZestFinance and Merrill have received significant financing from Victory Park Capital Advisors, a hedge fund that has funded other rent-a-tribe payday lending schemes.<sup>5</sup>

38. The primary lending and collection operations of BlueChip are not operated on tribal land or on tribal property. For example, payments on the loans are not made to BlueChip on tribal lands, but instead are sent to a PO Box located in Palatine, Illinois. Further, BlueChip’s CEO works in San Diego, California.

39. The Tribe has little or no control over how the loans are financed or

<sup>4</sup> See [www.zestfinance.com/our-team](http://www.zestfinance.com/our-team).

<sup>5</sup> See [www.foxbusiness.com/features/think-finance-bankruptcy-exposes-fallout-with-victory-park-capital](http://www.foxbusiness.com/features/think-finance-bankruptcy-exposes-fallout-with-victory-park-capital).

1 underwritten. ZestFinance provides all of the underwriting services for the loans.

2 40. The Tribe receives only about one percent of the profits from the lending  
3 activities while 99% percent of the profits go to ZestFinance and other non-tribal entities.

4 41. Despite not being operated or controlled by the Tribe, Defendants purport to  
5 represent to consumers that state laws designed to protect consumers from usurious loans do not  
6 apply to their loans from Defendants. For example, Defendants' form loan agreements state  
7 that: "By signing this Loan Agreement, you agree that the laws of the Tribe will apply to the  
8 Loan Agreement, and understand that United States state law does not apply to the Loan  
9 Agreement in any way."

10 42. This scheme has been very successful. Defendants have made over 500,000  
11 loans since 2012.

12 43. In 2016, BlueChip was ordered to cease and desist from lending in Illinois by the  
13 Illinois Department of Financial and Professional Regulation for not having a license to lend in  
14 Illinois.<sup>6</sup>

15 44. In 2017, the Washington Department of Financial Institutions issued a warning  
16 to consumers that BlueChip was not licensed in the state of Washington or registered to conduct  
17 business in Washington.<sup>7</sup>

## 18 **VII. PLAINTIFF TITUS' EXPERIENCE**

19 45. Plaintiff Teresa Titus is a 60-year-old grandmother who resides in Ridgefield,  
20 Washington. Since approximately 1990, Ms. Titus has been receiving Social Security Disability  
21 payments as a significant source of her income. She has also worked for various attorneys as a  
22 contract paralegal for more than twenty years. In addition, for the past six or seven years, Ms.

23 <sup>6</sup> See [www.idfpr.com/DFI/CCD/Discipline/BluechipFinancialCDOOrder.pdf](http://www.idfpr.com/DFI/CCD/Discipline/BluechipFinancialCDOOrder.pdf).

24 <sup>7</sup> See [dfi.wa.gov/consumer/alerts/bluechip-financial-not-licensed-washington](http://dfi.wa.gov/consumer/alerts/bluechip-financial-not-licensed-washington).

1 Titus has worked part-time as a bookkeeper for an internet company, a job for which she is paid  
2 a flat monthly rate.

3 46. After divorcing her abusive ex-husband in 1993, raising her son alone after her  
4 ex-husband went to prison, enduring further abuse at the hands of a physician, and mourning the  
5 death of her father, Ms. Titus decided she needed a fresh start. She moved from her native  
6 California to Washington in 2005.

7 47. Ms. Titus purchased property in Ridgefield, Washington in 2005 and built a  
8 house on the property. Ms. Titus lived in that house for more than 12 years. However, she fell  
9 behind on her mortgage payments.

10 48. Trying to save her house, Ms. Titus hired an attorney to help her file for Chapter  
11 13 bankruptcy. In 2014, she filed her bankruptcy action. After filing the action, she learned that  
12 Wells Fargo wanted to work with her to settle its potential foreclosure claims against her.  
13 Despite ultimately dismissing the bankruptcy action in April 2015, she had to pay her  
14 bankruptcy attorney \$5,000 in fees, on top of the amounts she still owed on her mortgage.

15 49. Wells Fargo subsequently offered Ms. Titus a loan modification that *increased*  
16 her monthly payments. Ms. Titus could not afford to pay the increased amount. Wells Fargo  
17 filed a foreclosure action against Ms. Titus in 2015. In trying to save her home by challenging  
18 Wells Fargo's entitlement to foreclose on her property, Ms. Titus incurred additional attorneys  
19 fees.

20 50. In the course of trying to save her home while also paying her basic living  
21 expenses, Ms. Titus quickly incurred more debts than she could afford to pay on her limited  
22 income. Facing dire financial circumstances, on December 7, 2015, she applied for a loan on  
23 [www.spotloan.com](http://www.spotloan.com).

24



1           51.     As part of her application, Ms. Titus entered in her Washington residential  
2 address.

3           52.     She was approved for a loan for \$800.00. The loan had an annual interest rate of  
4 390%. To pay off the entire loan, Ms. Titus would have to pay a total of \$1,787.88 over the  
5 course of the loan.

6           53.     On December 8, 2015, \$800 was deposited into her bank account by “Spotloan  
7 DB.”

8           54.     By June 2016, Ms. Titus had paid Defendants a total of \$1,492.97 on her  
9 December 2015 loan. But when she could no longer afford her payments on the loan, she had to  
10 take out another loan to cover her payments on the first loan. Over the course of the next year,  
11 Ms. Titus suffered from this debt treadmill whereby she had to take out new loans in order to  
12 pay back old loans.

13          55.     In addition to her original loan, Ms. Titus took out loans from Defendants in June  
14 2016 (\$600), November 2016 (\$800), and April 2017 (\$800). These loans had interest rates  
15 ranging from 420% to 460%.

16          56.     Since early 2016, Ms. Titus has paid \$5,976.04 to Defendants toward her \$3,000  
17 principal in Bluechip/Spotloan loans. Ms. Titus has also paid \$105 in overdraft fees associated  
18 with automatic bank account debits for her Bluechip/Spotloan payments.

19          57.     Defendants are still attempting to collect additional payments from Ms. Titus.

## 20                               **VIII. CLASS ACTION ALLEGATIONS**

21          58.     Plaintiff asserts her claims on behalf of the proposed Washington Class defined  
22 as follows:

All Washington residents from whom Defendants collected or attempted to collect loans and/or who engaged in a loan transaction with Defendants in the four years preceding the filing of this complaint to the date that the class list is created.

59. Plaintiff asserts her claims on behalf of the proposed RICO Class defined as follows:

All United States residents from whom Defendants collected or attempted to collect loans and/or who engaged in a loan transaction with Defendants in the four years preceding the filing of this complaint to the date that the class list is created.

**B. Numerosity**

60. At this time, Plaintiff does not know the exact number of members of the Classes; however, given the volume of Defendants' business, there are likely thousands of members of each Class. Thus, the Classes are so numerous that joinder of all members is impracticable.

**C. Commonality**

61. There are numerous common questions of law and fact common to Plaintiffs and members of the Classes. These questions include but are not limited to the following:

- a. Whether Defendants violated Washington usury laws;
- b. Whether Defendants are protected by tribal sovereign immunity;
- c. Whether Defendants engaged in unfair or deceptive acts or practices;
- d. Whether Defendants' unfair or deceptive acts or practices affected the public interest;
- e. Whether Defendants' unfair or deceptive acts or practices caused injury to property;
- f. Whether Defendants violated RICO by charging interest rates more than

twice the legal limit under state law;

g. The proper measure and amount of damages for the Classes.

#### **D. Typicality**

62. Plaintiff's claims are typical of the claims of the Classes. Plaintiff, like members of the Classes, took out usurious loans from Defendants. Thus, Plaintiff's claims, like the claims of the Classes, arise out of the same common practices of conduct by Defendants and are based on the same legal and remedial theories.

#### **E. Adequacy**

63. Plaintiff will fairly and adequately protect the interests of the Classes. Plaintiff has competent and capable attorneys who are experienced trial lawyers with significant experience litigating complex class actions. Plaintiff and her counsel are committed to prosecuting this action vigorously on behalf of the Classes and have the financial resources to do so. Neither Plaintiff nor her counsel has interests that conflict with the Classes.

#### **F. Injunctive Relief**

64. The Class meets the requirements for certification to obtain injunctive or equitable relief under Fed. R. Civ. P. 23(b)(2), as Defendants have acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive or equitable relief with respect to the Classes as a whole. Prosecution of separate actions by individual members of the Classes would create the risk of inconsistent or varying adjudications with respect to individual members of the Classes that would establish incompatible standards of conduct for Defendants.

#### **G. Predominance and Superiority**

65. The Classes meet the requirements for certification to seek monetary relief under

1 Fed. R. Civ. P. 23(b)(3), as the questions of law or fact common to class members predominate  
 2 over questions affecting only individual members, and a class action is superior to other  
 3 available methods for fairly and efficiently adjudicating the controversy. Additionally,  
 4 individual actions may be dispositive of the interests of members of the Classes even though  
 5 certain members of the Classes are not parties to such actions. Further, a class action is superior  
 6 to other available methods for the fair and efficient adjudication of the controversy, for at least  
 7 the following reasons:

8 a. Absent a class action, class members as a practical matter will be unable  
 9 to obtain redress; Defendants' violations will continue without remedy; and additional  
 10 consumers will be harmed.

11 b. It would be a substantial hardship for most individual members of the  
 12 Classes if they were forced to prosecute individual actions.

13 c. A class action will permit an orderly and expeditious administration of  
 14 class claims and foster economies of time, effort, and expense.

15 d. The lawsuit presents no difficulties that would impede its management by  
 16 the Court as a class action.

17 e. Defendants have acted on grounds generally applicable to class members,  
 18 making class-wide relief appropriate.

## 19 **IX. CAUSES OF ACTION**

### 20 **FIRST CAUSE OF ACTION**

#### 21 **Usury - RCW 19.52.030** 22 **(On behalf of Plaintiff and the Washington Class)**

23 66. Plaintiff realleges and incorporates by reference each and every allegations set  
 24 forth in the preceding paragraphs.

67. Under RCW 19.52.020, the maximum allowable interest rate in Washington has been twelve percent per annum since at least 2004. *See also* RCW 19.52.025; State Maximum Interest Rate, *available at* <http://leg.wa.gov/CodeReviser/Documents/rates.htm>.

68. A contract is usurious if it provides for a rate of interest higher than the statutory maximum of twelve percent. RCW 19.52.030(1).

69. If a contract is usurious, “the creditor shall only be entitled to the principal, less the amount of interest accruing thereon at the rate contracted for; and if interest shall have been paid, the creditor shall only be entitled to the principal less twice the amount of the interest paid, and less the amount of all accrued and unpaid interest; and the debtor shall be entitled to costs and reasonable attorneys’ fees plus the amount by which the amount the debtor has paid under the contract exceeds the amount to which the creditor is entitled.” RCW 19.52.030(1).

70. Defendants entered into usurious contracts with Plaintiff and Washington Class members by charging interest rates well in excess of twelve percent.

71. Therefore, Plaintiff and Washington Class members are entitled to a declaration that Defendants’ loan contracts are usurious. Plaintiff and Washington Class members are entitled to recover any amounts paid in excess of the amount Defendants are entitled to collect on the loans, pursuant to RCW 19.52.030.

## **SECOND CAUSE OF ACTION**

### ***Per se* Violation of the Washington Consumer Protection Act – RCW 19.86.020 and RCW 19.52.036 (On behalf of Plaintiff and the Washington Class)**

72. Plaintiff realleges and incorporates by reference each and every allegations set forth in the preceding paragraphs.

73. Plaintiff and Washington Class members are “persons” within the meaning of the Washington Consumer Protection Act, RCW 19.86.010(1).

1           74. Pursuant to RCW 19.52.036, “[e]ntering into or transacting a usurious contract”  
2 is per se “an unfair act or practice in the conduct of commerce for purposes of application of the  
3 consumer protection act.”

4           75. As alleged above, Defendants entered into usurious contracts with Plaintiff and  
5 Washington Class members by contracting for interest rates exceeding the statutory maximum  
6 of twelve percent. Thus, Defendants engaged in unfair acts or practices in the conduct of  
7 commerce.

8           76. Defendants’ deceptive acts or practices have impacted the public interest because  
9 they have injured Plaintiff and thousands of Washington residents by charging them interest in  
10 excess of the amount allowed by law.

11           77. As a direct and proximate result of Defendants’ unfair and deceptive acts and  
12 practices, Plaintiff and the Washington Class have been injured. Defendants’ conduct has  
13 injured the property of Plaintiff and the other class members by charging and collecting interest  
14 that they were not legally entitled to charge or collect.

15           78. Defendants’ wrongdoing is continuing in nature and represents an ongoing threat  
16 to Plaintiff and Washington Class members, particularly since Defendants continue to make  
17 loans to Washington residents at usurious interest rates and continue to collect unlawful interest  
18 on usurious loans already made to Washington residents. Thus, Plaintiff and Washington Class  
19 members will suffer continuing, immediate, and irreparable injury absent the issuance of  
20 injunctive and equitable relief.

21           79. Plaintiff and Washington Class members are entitled to recover actual damages,  
22 treble damages, and injunctive and equitable relief. In addition, Plaintiff and Washington Class  
23 members are entitled to recover attorneys’ fees and costs pursuant to RCW 19.86.090.

**THIRD CAUSE OF ACTION**

**Violation of the Washington Consumer Protection Act – RCW 19.86 – Deceptive Business Practice  
(On behalf of Plaintiff and the Washington Class)**

80. Plaintiff realleges and incorporates by reference each and every allegations set forth in the preceding paragraphs.

81. Plaintiff and Washington Class members are “persons” within the meaning of the Washington Consumer Protection Act, RCW 19.86.010(1).

82. Defendants engaged in deceptive acts that occurred in trade or commerce by conduct set forth above. These deceptive acts include the following:

a. Attempting to avoid application of Washington usury law by improperly using tribal sovereign immunity as a shield for their activities;

b. Representing or implying that state law does not apply to Plaintiff’s and Washington Class members’ loans;

c. Charging interest rates that are well in excess of the rates allowed by law and demanding or collecting payment of this excessive interest.

83. Defendants’ deceptive acts and practices have occurred in trade or commerce.

84. Defendants’ deceptive acts or practices have impacted the public interest because they have injured Plaintiff and thousands of Washington residents by charging them interest in excess of the amount allowed by law. Defendants deceived Plaintiff and members of the Washington Class by representing or implying that they could legally charge interest rates of 400% or more because Defendants claim Spotloan is a tribal entity not subject to state law.

85. As a direct and proximate result of Defendants’ deceptive acts and practices, Plaintiff and the Washington Class have been injured. Defendants’ conduct has injured the

1 property of Plaintiff and the other class members by charging and collecting interest that they  
2 were not legally entitled to charge or collect.

3 86. Defendants' wrongdoing is continuing in nature and represents an ongoing threat  
4 to Plaintiff and Washington Class members, particularly since Defendants continue to represent  
5 that they are lawfully entitled to make loans exceeding Washington's usury cap, continue to  
6 make loans to Washington residents at usurious interest rates, and continue to collect unlawful  
7 interest on usurious loans already made to Washington residents. Thus, Plaintiff and  
8 Washington Class members will suffer continuing, immediate, and irreparable injury absent the  
9 issuance of injunctive and equitable relief.

10 87. Plaintiff and Washington Class members are entitled to recover actual damages,  
11 treble damages, and injunctive and equitable relief. In addition, Plaintiff and Washington Class  
12 members are entitled to recover attorneys' fees and costs pursuant to RCW 19.86.090.

#### 13 **FOURTH CAUSE OF ACTION**

##### 14 **Violation of the Washington Consumer Protection Act – RCW 19.86 – Unfair Business Practice 15 (On behalf of Plaintiff and the Washington Class)**

16 88. Plaintiff realleges and incorporates by reference each and every allegations set  
17 forth in the preceding paragraphs.

18 89. Plaintiff and Washington Class members are "persons" within the meaning of the  
19 Washington Consumer Protection Act, RCW 19.86.010(1).

20 90. Defendants engaged in unfair acts that occurred in trade or commerce by conduct  
21 set forth above. These deceptive acts include the following:

22 a. Attempting to avoid application of Washington usury law by improperly  
23 using tribal sovereign immunity as a shield for their activities;  
24



1           b.       Representing or implying that state law does not apply to Plaintiff's and  
2 Washington Class members' loans;

3           c.       Charging interest rates that are well in excess of the rates allowed by law  
4 and demanding or collecting payment of this excessive interest.

5           91.     Defendants' acts and practices are unfair because they: (1) cause substantial  
6 financial injury to Plaintiffs and members of the Washington Class; (2) are not outweighed by  
7 any countervailing benefits to consumers or competitors; and (3) are not reasonably avoidable  
8 by consumers. Defendants' acts and practices are also unfair because they are immoral,  
9 unethical, oppressive and unscrupulous.

10          92.     Defendants' unfair acts and practices have occurred in trade or commerce.

11          93.     Defendants' unfair acts or practices have impacted the public interest because  
12 they have injured Plaintiff and thousands of Washington residents by charging them interest in  
13 excess of the amount allowed by law. Defendants acted unfairly by representing or implying  
14 that they could legally charge interest rates of 400% or more because Defendants claim  
15 Spotloan is a tribal entity not subject to state law.

16          94.     As a direct and proximate result of Defendants' unfair acts and practices,  
17 Plaintiff and the Washington Class have been injured. Defendants' conduct has injured the  
18 property of Plaintiff and the other class members by charging and collecting interest that they  
19 were not legally entitled to charge or collect.

20          95.     Defendants' wrongdoing is continuing in nature and represents an ongoing threat  
21 to Plaintiff and Washington Class members, particularly since Defendants continue to represent  
22 that they are lawfully entitled to make loans exceeding Washington's usury cap, continue to  
23 make loans to Washington residents at usurious interest rates, and continue to collect unlawful  
24

1 interest on usurious loans already made to Washington residents. Thus, Plaintiff and  
 2 Washington Class members will suffer continuing, immediate, and irreparable injury absent the  
 3 issuance of injunctive and equitable relief.

4 96. Plaintiff and Washington Class members are entitled to recover actual damages,  
 5 treble damages, and injunctive and equitable relief. In addition, Plaintiff and Washington Class  
 6 members are entitled to recover attorneys' fees and costs pursuant to RCW 19.86.090.

#### 7 **FIFTH CAUSE OF ACTION**

#### 8 **Violation of RICO, 18 U.S.C. §§ 1962(c) & (d)** 9 **(On behalf of Plaintiff and the RICO Class)**

10 97. Plaintiff realleges and incorporates by reference each and every allegations set  
 11 forth in the preceding paragraphs.

12 98. Each Defendant is a "person" as that term is defined in 18 U.S.C. § 1964(3).

13 99. The Enterprise, consisting of each named Defendant and the unnamed officers,  
 14 executives, and other employees of BlueChip and ZestFinance, are an association in fact  
 15 "enterprise" as that term is defined in 18 U.S.C. § 1961(4) associated for the common purpose  
 16 of profiting off of the collection on unlawful debt by offering and collecting on loans to  
 17 consumers throughout the United States through the online lender Spotloan.

18 100. The Enterprise had an ongoing organization with an ascertainable structure, and  
 19 functioned as a continuing unit with separate roles and responsibilities.

20 101. Defendants violated § 1962(c) of RICO by participating, directly or indirectly, in  
 21 the conduct of the Enterprise's affairs in the collection of unlawful debt.

22 102. RICO defines "unlawful debt" as a debt which was incurred in connection with  
 23 "the business of lending money or a thing of value at a rate usurious under State or Federal law,  
 24 where the usurious rate is at least twice the enforceable rate." 18 U.S.C. § 1961(6).

103. All of the loans made to Washington residents and collected by Defendants included an interest rate far in excess of twice the enforceable rate in Washington. Further, Defendants' loans to RICO Class members included interest rates in excess of twice the enforceable rate under other applicable state law.

104. Defendants also violated 18 U.S.C. § 1962(d) by conspiring to use the Enterprise to collect unlawful debt. Each Defendant knowingly agreed to participate in the scheme alleged herein that allowed the Enterprise to make and collect unlawful debt at more than twice the lawful rate of interest under state usury laws.

105. Plaintiff and RICO Class members were injured as a direct result of Defendants' violations of 18 U.S.C. § 1962(c) by, among other things, the payment of unlawful and usurious rates of interest on loans made by the Enterprise.

106. This conduct began sometime in 2012, continues to date, and will be repeated again and again in the future to the detriment of Washington consumers and consumers nationwide.

107. Accordingly, Defendants are jointly and severally liable to Plaintiff and the RICO Class for their actual damages, treble damages, costs, and attorney's fees pursuant to 18 U.S.C. § 1964(c).

## **SIXTH CAUSE OF ACTION**

### **Unjust Enrichment (On behalf of Plaintiff and the Washington Class)**

108. Plaintiff realleges and incorporates by reference each and every allegations set forth in the preceding paragraphs.

109. To the detriment of Plaintiff and Class members, Defendants have been, and continue to be, unjustly enriched as a result of charging and collecting illegal, usurious interest rates.

110. As between the parties, it would be unjust for Defendants to retain the benefits attained by their actions. Accordingly, Plaintiff seeks a full accounting and restitution of Defendants' enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful conduct alleged herein.

### **X. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against Defendant as follows:

A. An Order certifying the proposed Classes under Fed. R. Civ. P. 23(b)(2), and (b)(3) and appointing Plaintiff as class representative and her counsel as class counsel, as soon as practicable;

B. An Order declaring that Defendants are financially responsible for notifying members of the Classes of the pendency of this suit;

C. An Order declaring that Defendants have committed the violations of law alleged herein;

D. An Order providing for any and all injunctive relief the Court deems appropriate;

E. An Order awarding monetary damages, including but not limited to any compensatory, incidental, or consequential damages in an amount to be determined by the Court or jury;

F. An Order awarding treble damages in accordance with proof and in an amount consistent with applicable precedent;

1 G. An Order awarding interest at the maximum allowable legal rate on the  
2 foregoing sums;

3 H. An Order awarding Plaintiff her reasonable costs and expenses of suit, including  
4 attorneys' fees; and

5 I. Such further relief as this Court may deem just and proper.

6 **XI. DEMAND FOR JURY TRIAL**

7 Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury.

8 RESPECTFULLY SUBMITTED AND DATED this 10th day of May, 2018.

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